

Statutory Amendments of Interest

*

Bureau of Land and Water Quality
Second Regular Session, 119th Legislature
Maine Department of Environmental Protection
DEPLW2000-21 May, 2000

The text of the amendments is taken from the web site maintained by the Maine Office of the Revisor of Statutes (<http://www.state.me.us/legis/ros/>). The text has been reformatted for purposes of this document. Information concerning effective dates has been added.

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication includes amendments made during the Second Regular Session of the 119th Legislature, and is subject to change without notice. It is a version that is presumed accurate but which has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

Table of Contents

Resolve, Ch. 116. Resolve, to Require the Board of Environmental Protection and the Maine Land Use Regulation Commission to Adopt Consistent Rules Regarding Cutting and Removal of Vegetation. **Page 1**

Ch. 552. An Act Regarding the Maintenance of Private Roads. **Page 2**

Ch. 556, sections 31-35 of An Act to Change the Name of the Natural Resources Information and Mapping Center to More Accurately Reflect its Roles and Duties and to Correct Inconsistent Statutes **Page 3**

Ch. 655. An Act to Rid Maine's Waters of Ocean Vessel Sewage. **Page 3**

Ch. 657, section 26 of An Act Relating to Electric Industry Restructuring. **Page 5**

Ch. 695. An Act to Provide for Statewide Standards for Timber Harvesting in Shoreland Areas and to Modify Regulation of Stream Crossings. **Page 5**

Ch. 720. An Act Regarding Discharges from Small Fish Hatcheries That Operated Prior to 1986. **Page 6**

Ch. 722. An Act to Prevent the Spread of Invasive Aquatic Plants. **Page 6**

Ch. 726. An Act to Require Nutrient Management Plans for Fish Hatcheries Except for Aquaculture. **Page 8**

Ch. 761, sections 12 and 13 of An Act to Improve Public Water Supply Protection. **Page 9**

Ch. 776, sections 15, 17, and 23 of An Act to Implement the Land Use Recommendations of the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development. **Page 9**

Ch. 779, sec. 6 of An Act to Reduce the Release of Mercury into the Environment from Consumer Products. **Page 10**

Ch. 782. An Act to Establish the Dam Repair and Reconstruction Fund and Reconstruct 2 Small Dams in Whiting. **Page 10**

Ch. 784. An Act to Implement the Recommendations of the Task Force to Study the Operation of and Support for the Board of Environmental Protection. **Page 11**

Ch. 790, sections A-49 to A-52 of An Act to Correct Errors and Inconsistencies in the Laws of Maine. **Page 12**

Ch. 116 effective August 11, 2000.

CHAPTER 116

H.P. 1868 - L.D. 2604

Resolve, to Require the Board of Environmental Protection and the Maine Land Use Regulation Commission to Adopt Consistent Rules Regarding Cutting and Removal of Vegetation

Sec. 1. Rules to regulate cutting and removal of vegetation in areas adjacent to rivers, streams, brooks, ponds, wetlands and tidal waters. Resolved: That notwithstanding the Maine Revised Statutes, Title 38, chapter 3, subchapter I, articles 2-B and 5-A and in accordance with the purposes of Title 12, chapter 206-A and Title 38, chapter 3, including the control of nonpoint source pollution, no later than January 2, 2002, the Board of Environmental Protection and the Department of Conservation, Maine Land Use Regulation Commission shall each provisionally adopt rules in accordance with Title 5, chapter 375 to regulate the cutting and removal of

vegetation, other than timber harvesting activities, in areas adjacent to rivers, streams, brooks, ponds, wetlands and tidal waters.

The Board of Environmental Protection and the Maine Land Use Regulation Commission shall coordinate their rulemaking to adopt rules that resolve inconsistencies, where appropriate, among standards established pursuant to the Maine Revised Statutes, Title 12, chapter 206-A and Title 38, chapter 3, subchapter I, articles 2-B and 5-A and retain standards established pursuant to those statutes when those standards are consistent. Upon final adoption, rules adopted by the board apply in the organized areas of the State and rules adopted by the commission apply in the unorganized and deorganized areas of the State.

Rules adopted pursuant to this section do not apply to timber harvesting activities, but the Board of Environmental Protection and the Maine Land Use Regulation Commission shall consult with the Commissioner of Conservation to coordinate the standards related to timber harvesting activities with the standards related to the cutting and removal of vegetation other than timber harvesting.

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be provisionally adopted and submitted to the Legislature no later than January 2, 2002 for review; and be it further

Sec. 2. Legislation authorized. Resolved: That the joint standing committee of the Legislature having jurisdiction over natural resources matters may report out a bill to the Second Regular Session of the 120th Legislature to amend provisions in the Maine Revised Statutes, Title 12, chapter 206-A administered by the Department of Conservation, Maine Land Use Regulation Commission and in Title 38, chapter 3, subchapter I, articles 2-B and 5-A administered by the Department of Environmental Protection to clarify the authority of these agencies to regulate the cutting or removal of vegetation and to resolve inconsistencies between the rules adopted pursuant to section 1 and those statutes; and be it further

Sec. 3. Education initiative. Resolved: That after rules are adopted pursuant to section 1, the Department of Environmental Protection and the Department of Conservation, Maine Land Use Regulation Commission and Bureau of Forestry shall jointly develop and implement an educational initiative to inform the public in all areas of the State about the standards for the cutting and removal of vegetation.

Ch. 552 effective August 11, 2000.

CHAPTER 552

H.P. 332 - L.D. 448

An Act Regarding the Maintenance of Private Roads

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §3101, as amended by PL 1997, c. 682, §1, is further amended to read:

§3101. Call of meetings; repairs

Except as provided in this section, when 4 or more parcels of land are benefited by a private way or bridge as an appurtenant easement or by fee ownership of the way or bridge, the owners of any 3 or more of the parcels, as long as at least 3 of the parcels are owned by different persons, may make written application to a notary public to call a meeting, who may issue a warrant setting forth the time, place and purpose of the meeting, copies of which must be posted at some public place in the town and mailed to the owners of all the parcels benefited by the way at the addresses set forth in the municipal tax records, at least 30 days before such time. When so assembled, they may choose a commissioner, to be sworn, and they may determine what repairs are necessary and the materials to be furnished or amount of money to be paid by each owner for the repairs and the manner of calling future meetings. This section does not apply to ways constructed or primarily used for commercial or forest management purposes. As used in this section, "repairs" does not include paving, except to repair existing pavement or in locations where limited paving is demonstrated to be a cost-effective approach for fixing an erosion problem.

Sec. 2. 23 MRSA §3102, as amended by PL 1997, c. 682, §2, is further amended to read:

§3102. Commissioner's duties; neglect of owners to pay

The commissioner chosen under section 3101, with respect to the way or bridge, has the powers of a road commissioner. If any owner, on requirement of the commissioner, neglects to furnish that owner's proportion of labor, materials or money, the same may be furnished by the other owners and recovered of the owner neglecting to pay in a civil action, together with costs of suit and reasonable attorney's fees. The commissioner's apportioning of the cost of repairs to the road undertaken pursuant to the provisions of section 3101 may not exceed

1% of an individual owner's property valuation in any calendar year.

Ch. 556 effective August 11, 2000.

CHAPTER 556

S.P. 925 - L.D. 2376

An Act to Change the Name of the Natural Resources Information and Mapping Center to More Accurately Reflect its Roles and Duties and to Correct Inconsistent Statutes

Be it enacted by the People of the State of Maine as follows:

[Only sections 31-35 are reprinted here]

Sec. 30. 38 MRSA §361-A, sub-§1-D, as enacted by PL 1981, c. 470, Pt. A, §164 and amended by PL 1995, c. 502, Pt. E, §32, is further amended to read:

1-D. Aquifer. "Aquifer" means a geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water, as identified by the Natural Resources Information and Mapping Center Bureau of Geology and Natural Areas, Maine Geological Survey within the Department of Conservation.

Sec. 31. 38 MRSA §402, 2nd ¶, as enacted by PL 1985, c. 465, §2 and amended by PL 1995, c. 502, Pt. E, §32, is further amended to read:

The Natural Resources Information and Mapping Center Bureau of Geology and Natural Areas, Maine Geological Survey within the Department of Conservation in cooperation with other agencies as appropriate shall conduct a 3-year program to assess the impact of agricultural practices and chemicals on ground water quality in selected agricultural areas and selected aquifers. The program ~~shall~~ must evaluate the extent and level of contamination associated with pesticide use, the mechanisms by which pesticides move through the soil and into ground water supplies, the synergistic effects of these substances and their persistence in ground water.

Sec. 32. 38 MRSA §480-X, sub-§5, as amended by PL 1995, c. 502, Pt. E, §32 and c. 575, §3, is further amended to read:

5. Additional projects not eligible for Tier 2 review. An activity in freshwater wetlands containing a natural community that is imperiled (S2) or critically imperiled (S1), as defined by the ~~Resources Information~~

~~and Mapping Center~~ Natural Areas Program pursuant to Title § 12, section ~~13076~~ 544 is not eligible for Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present.

Sec. 33. 38 MRSA §480-Y, sub-§2, ¶C, as enacted by PL 1995, c. 659, §1, is amended to read:

C. The pond may not be located in a wetland containing endangered or threatened plant species as determined pursuant to Title § 12, section ~~13078~~ 544-B, subsection 3 or containing a natural community that is imperiled (S2) or critically imperiled (S1) as defined by the Natural Areas Program pursuant to Title § 12, section ~~13076~~ 544.

Sec. 34. 38 MRSA §490-D, sub-§1, as amended by PL 1995, c. 700, §24, is further amended to read:

1. Significant wildlife habitat. Affected land may not be located in a significant wildlife habitat, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title § 12, section ~~13076~~ 544. The department may not grant a variance from the provisions of this subsection.

Sec. 35. 38 MRSA §490-Z, sub-§1, as enacted by PL 1995, c. 700, §35, is amended to read:

1. Significant wildlife habitat. Affected land may not be located in a significant wildlife habitat as defined in section 480-B, subsection 10 or in an area listed pursuant to the Natural Areas Program, Title § 12, section ~~13076~~ 544. The department may not grant a variance from the provisions of this subsection.

Ch. 655 effective August 11, 2000.

CHAPTER 655

S.P. 924 - L.D. 2375

An Act to Rid Maine's Waters of Ocean Vessel Sewage

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. Determination and plan regarding state marine sanitation device pump-out station needs and extent of no-discharge zone. The Department of Environmental Protection shall:

1. Review the number and location of all operational pump-out stations and waste reception facilities at public and private marinas and other boating access facilities within the coastal zone of the State;

2. Apply for grant money under the federal Clean Vessel Act of 1992, 106 Stat. 5086-5091 to construct, renovate, operate and maintain pump-out facilities and to conduct a program to educate vessel owners and operators about the problems caused by the discharge of sanitary waste from vessels;

3. Develop a plan for the construction, renovation or maintenance of pump-out facilities that are necessary to ensure that such facilities are adequate to meet the needs of watercraft using the coastal waters of the State and submit a report on the plan no later than January 15, 2001 to the joint standing committee of the Legislature having jurisdiction over natural resources matters;

4. Develop a program to educate vessel owners and operators about the problem of sanitary waste discharges from vessels and inform them of the location of pump-out facilities;

5. No later than January 15, 2004, report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the status of implementing the plan developed pursuant to subsection 3, the adequacy of facilities for the safe and sanitary removal of sanitary waste from watercraft using significant harbors and bays in the State and plans for enforcement of no-discharge zones in the State;

6. No later than January 15, 2005, apply to the United States Environmental Protection Agency for designation of up to 50 significant harbors or bays in the territorial waters of the State, as identified by the Commissioner of Environmental Protection, as "no-discharge zones" pursuant to 33 United States Code, Section 1322. In identifying significant harbors and bays, the commissioner shall give priority to areas that are potentially commercially significant shellfish harvesting resources and areas that have significant boat traffic; and

7. No later than January 15, 2005, report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the feasibility of implementing a no-discharge zone for all the territorial waters of the State.

PART B

Sec. B-1. 38 MRSa §423-B, as enacted by PL 1989, c. 433, §2, is repealed and the following enacted in its place:

§423-B. Watercraft sanitary waste pump-out facilities at marinas

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Marina" means a facility that provides supplies or services and has the capacity to provide any combination of slip space or mooring for 18 or more vessels that exceed 24 feet in length.

B. "Pump-out facility" means a facility that pumps or receives sanitary wastes out of marine sanitation devices that are specifically designed to receive, retain and discharge sanitary wastes and that are installed on board watercraft. "Pump-out facility" includes a stationary pump-out station, a portable marine toilet dump station and a mobile pump-out vessel.

2. Pump-out facilities required. A marina serving coastal waters shall provide a pump-out facility or provide through a written contractual agreement approved by the commissioner a facility to remove sanitary waste from the holding tanks of watercraft.

3. Exception. A marina is not required to meet the requirements in subsection 2 until a grant for the construction or renovation of a pump-out facility or the initial cost of a contractual agreement is offered to that marina pursuant to subsection 4.

4. Cost share. Subject to the availability of funds, the commissioner shall award grants using a combination of federal and state funds for the costs of constructing, renovating, operating and maintaining pump-out facilities and providing facilities through contractual agreements according to the following schedule:

A. The commissioner shall pay 90% of these costs incurred by municipal marinas; and

B. The commissioner shall pay up to 75% of these costs incurred by marinas other than municipal marinas.

When awarding grants, the commissioner shall give priority to a pump-out facility over a contractual agreement and shall give priority to a pump-out facility that the Commissioner of Marine Resources certifies is likely to result in the opening of a shellfish harvesting area that is closed under Title 12, section 6172.

Ch. 657 effective April 10, 2000.

CHAPTER 657

H.P. 1788 - L.D. 2508

An Act Relating to Electric Industry Restructuring

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, retail choice in the State's electricity market is scheduled by law to occur on March 1, 2000; and

Whereas, changes to various laws are necessary to bring the laws into conformity with the restructuring of the electric industry; and

Whereas, these changes must occur contemporaneously with the start of retail choice; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

[Only Section 23 is reprinted here]

Sec. 23. 38 MRSA §487-A, sub-§2, as amended by PL 1997, c. 72, §1, is further amended to read:

2. Power generating facilities. In case of a permanently installed ~~power generating facility of more than 1,000 kilowatts or a transmission line carrying 100 kilovolts, or more,~~ proposed to be erected within this State by ~~an electric~~ a transmission and distribution utility or utilities, the proposed development, in addition to meeting the requirements of section 484, must also have been approved by the Public Utilities Commission under Title 35-A, section 3132.

In the event that ~~an electric~~ a transmission and distribution utility or utilities file a notification pursuant to section 485-A before they are issued a certificate of public convenience and necessity by the Public Utilities Commission, they shall file a bond or, in lieu of that bond, satisfactory evidence of financial capacity to make that reimbursement with the department, payable to the department, in a sum satisfactory to the commissioner and in an amount not to exceed \$50,000. This bond or evidence of financial capacity must be conditioned to require the applicant to reimburse the department for its

cost incurred in processing any application in the event that the applicant does not receive a certificate of public convenience and necessity.

Ch. 695 effective August 11, 2000.

CHAPTER 695

H.P. 1919 - L.D. 2665

An Act to Provide for Statewide Standards for Timber Harvesting in Shoreland Areas and to Modify Regulation of Stream Crossings

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §8867-B is enacted to read:

§8867-B. Regulation of timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters

In accordance with the purposes of chapter 206-A and Title 38, chapter 3, no later than January 2, 2002, the Commissioner of Conservation shall provisionally adopt rules in accordance with Title 5, chapter 375 to establish performance standards for timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters. The rules must provide the maximum opportunity for flexibility that achieves the goal of protecting the public resources while minimizing the impact on private resources. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be submitted to the Legislature no later than January 2, 2002 for review.

In addition to the materials submitted pursuant to Title 5, section 8072, subsection 2, upon submitting the rules authorized by this section, the Commissioner of Conservation shall submit a report to the joint standing committee of the Legislature having jurisdiction over forestry matters that describes the rationale for new standards and the public resources and values protected by each standard.

The rules must resolve inconsistencies among standards established pursuant to chapter 206-A and Title 38, chapter 3, articles 2-B and 5-A and retain standards established pursuant to those statutes when those standards are consistent. Upon final adoption, performance standards established pursuant to this section apply to timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters throughout the State. The Commissioner of Conservation

shall administer the rules and enforce the standards adopted under this section.

Sec. 2. 12 MRSA §8868, sub-§5 is enacted to read:

5. Timber harvesting activities. "Timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Sec. 3. 38 MRSA §480-E, sub-§10 is enacted to read:

10. Road construction associated with forest management activities. A permit by rule for road construction or maintenance associated with a forest management activity becomes effective upon receipt of notification by the department as long as:

A. The road construction or maintenance is eligible for a permit by rule; and

B. The notification is on a form provided by the department and is complete.

This subsection is repealed August 1, 2002.

Sec. 4. Legislation authorized. The joint standing committee of the Legislature having jurisdiction over forestry matters may report out a bill to the Second Regular Session of the 120th Legislature to specify that the standards for timber harvesting activities in areas adjacent to standing and flowing water bodies and wetlands adopted pursuant to the Maine Revised Statutes, Title 12, section 8867-B apply statewide. The legislation must amend provisions in Title 12, chapter 206-A administered by the Maine Land Use Regulation Commission and in Title 38, chapter 3, subchapter I, articles 2-B and 5-A administered by the Department of Environmental Protection and to clarify the authority of these agencies to regulate timber harvesting.

Ch. 720, effective August 11, 2000.

CHAPTER 720

H.P. 1789 - L.D. 2509

An Act Regarding Discharges from Small Fish Hatcheries That Operated Prior to 1986

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §464, sub-§12 is enacted to read:

12. Discharges from certain fish hatcheries. An unlicensed discharge from a fish hatchery is considered, and continues to be considered after it is licensed pursuant to section 413, the same as a discharge licensed prior to January 1, 1986 for the purposes of subsection 4, paragraph A, subparagraph (1); section 465, subsection 2, paragraph C; and section 465-A, subsection 1, paragraph C if the following conditions are met:

A. The discharge was in existence prior to January 1, 1986;

B. The fish hatchery is licensed to cultivate fish by the Department of Inland Fisheries and Wildlife on the effective date of this subsection; and

C. An application from the hatchery for a waste discharge license is accepted as complete for processing by the Department of Environmental Protection within 90 days of notification that a waste discharge license is required pursuant to section 413.

The Department of Environmental Protection shall notify a fish hatchery with an unlicensed discharge that a waste discharge license is required pursuant to section 413 within 90 days of the effective date of this subsection or within 90 days of finding the unlicensed discharge.

Chapter 722 effective April 14, 2000.

CHAPTER 722

H.P. 1843 - L.D. 2581

An Act to Prevent the Spread of Invasive Aquatic Plants

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, invasive aquatic plants present an imminent threat to state waters; and

Whereas, it is important to prevent the transport of invasive aquatic plants into the State on boats and trailers because eradication is nearly impossible once an infestation occurs; and

Whereas, the summer boating season will begin prior to 90 days after adjournment; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following

legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §410-N is enacted to read:

§410-N. Aquatic nuisance species control

1. Definitions. As used in this section and section 419-C, unless the context otherwise indicates, the following terms have the following meanings.

A. "Aquatic plant" means a vascular plant species that requires a permanently flooded freshwater habitat.

B. "Invasive aquatic plant" means a species identified by the department through rulemaking as an invasive aquatic plant or one of the following species:

(1) Eurasian water milfoil, *Myriophyllum spicatum*;

(2) Variable-leaf water milfoil, *Myriophyllum heterophyllum*;

(3) Parrot feather, *Myriophyllum aquaticum*;

(4) Water chestnut, *Trapa natans*;

(5) Hydrilla, *Hydrilla verticillata*;

(6) Fanwort, *Cabomba caroliniana*;

(7) Curly pondweed, *Potamogeton crispus*;

(8) European naiad, *Najas minor*;

(9) Brazilian elodea, *Egeria densa*;

(10) Frogbit, *Hydrocharis morsus-ranae*; and

(11) Yellow floating heart, *Nymphoides peltata*.

Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

2. Education. The department shall prepare educational materials that inform the public about problems associated with invasive aquatic plants, how to identify invasive aquatic plants, why it is important to prevent the transportation of aquatic plants and the

prohibitions relating to aquatic plants contained in section 419-C. The department shall make the materials available to municipalities, lake associations, water quality monitors, law enforcement agents, businesses that sell aquatic plants in the State and other interested individuals.

A. The department shall provide signs for installation at all state boat launch facilities on fresh waters informing the public about the prohibition of aquatic plant transportation on boats and trailers and may provide these signs, as available funds allow, for installation at other boat launch sites including municipal boat launch facilities, campground boat launch facilities and other commonly used launch sites.

B. The department shall work with the Department of Transportation and the Maine Turnpike Authority to provide signs and educational materials on all major roads at the State's borders advising incoming boat owners that state law requires all boats and trailers to be free of aquatic plant material.

3. Control. The department shall investigate and document the occurrence of invasive aquatic plants in state waters and may undertake activities to control invasive aquatic plant populations as follows.

A. The department or a person designated by the department may attempt eradication of an invasive aquatic plant from a water body if determined feasible by the department. If the commissioner determines that eradication activities must be undertaken immediately, a license is not required under section 413 or section 480-C for the use of a physical, chemical or biological control material by the department or a person designated by the department if the use of the control material is specifically related to the immediate eradication of invasive aquatic plant populations in the water body. Prior to undertaking an eradication activity and to the extent practical, the department shall notify landowners whose property is adjacent to the area where the activity will be undertaken.

B. The department may conduct research to test new control methods for the eradication of invasive aquatic plants pursuant to section 362-A.

Sec. 2. 38 MRSA §419-C is enacted to read:

§419-C. Prevention of the spread of invasive aquatic plants

1. Prohibition. A person may not:

A. Transport any aquatic plant or parts of any aquatic plant, including roots, rhizomes, stems, leaves or seeds, on the outside of a vehicle, boat, personal watercraft, boat trailer or other equipment on a public road;

B. Possess, import, cultivate, transport or distribute any invasive aquatic plant or parts of any invasive aquatic plant, including roots, rhizomes, stems, leaves or seeds, in a manner that could cause the plant to get into any state waters; or

C. After September 1, 2000, sell or offer for sale in this State any invasive aquatic plant.

2. Penalty. A person who intentionally violates this section commits a civil violation for which a warning may be issued for the first violation, a forfeiture not to exceed \$50 may be adjudged for the 2nd violation and a forfeiture not to exceed \$500 may be adjudged for a subsequent violation.

Sec. 3. Report; invasive aquatic species control.

The Department of Environmental Protection and the Department of Inland Fisheries and Wildlife shall jointly submit a report on invasive aquatic species control, including recommendations and implementing legislation, to the joint standing committees of the Legislature having jurisdiction over natural resources matters and inland fisheries matters by January 15, 2001. The report must address at least the following:

1. Identification of other biological threats to the State's waters including invasive animal species that may become a nuisance;

2. Further education, awareness and prevention efforts needed to stop the introduction and spread of invasive species;

3. Methods to control the spread of invasive species should any become established in the State, including quarantine authority;

4. Enforcement of the prohibitions in the Maine Revised Statutes, Title 38, section 419-C;

5. The status of cooperation from other state agencies in educating the public about invasive aquatic species; and

6. Recommendations for necessary funding to support the prevention and control of invasive aquatic species.

In preparing the report, the departments shall consult with interested parties, including representatives of the following: the Maine Volunteer Lake Monitoring Program, lake associations, lakeshore owners, boat owners, sporting interests, business interests, marina owners, campground owners, environmental organizations, other state or federal agencies and interested agencies in neighboring states and provinces. The joint standing committee of the Legislature having jurisdiction over natural resources matters is authorized to report out a bill concerning invasive aquatic species control to the First Regular Session of the 120th Legislature.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Ch. 726. Effective April 14, 2000.

CHAPTER 726

S.P. 1052 - L.D. 2642

An Act to Require Nutrient Management Plans for Fish Hatcheries Except for Aquaculture

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §4214 is enacted to read:

§4214. Nutrient management plans for fish hatcheries

1. Nutrient management plan required for fish hatcheries. A person who owns or operates a fish hatchery, not including an off-shore marine aquaculture operation in estuarine or marine waters, must have and implement a nutrient management plan for the fish waste from the hatchery by the date specified in rules adopted pursuant to subsection 2. The commissioner shall maintain a list of fish hatcheries that have a nutrient management plan.

2. Rules for fish hatcheries. In accordance with Title 5, chapter 375, the commissioner shall adopt rules to establish requirements for nutrient management plans for fish hatcheries, compliance schedules for fish hatcheries, a process for review of the nutrient management plans, periodic revisions of plans and determination of compliance with the plans. A nutrient management plan for a fish hatchery must address storage, management and use of fish waste from the hatchery with the goal of improving water quality.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Ch. 761. Effective August 11, 2000.

CHAPTER 761

H.P. 1862 - L.D. 2597

An Act to Improve Public Water Supply Protection

[in part]

Sec. 12. Education strategy. By March 5, 2001, the Land and Water Resources Council shall hire a person in a temporary project position to develop an education strategy for public water supply protection aimed at municipalities and the general public. The strategy must include the message and tools to reach various audiences that affect the protection of public drinking water supplies. The council must develop recommendations and a budget to implement its proposal and recommend a position and budget within the Department of Environmental Protection to implement this strategy. The council shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by March 15, 2001 and the joint standing committee may report out any legislation needed to implement these recommendations.

Sec. 13. Integration of Maine Drinking Water Program into Department of Environmental Protection. The Department of Environmental Protection and the Department of Human Services shall jointly hire a consultant to review the drinking water and plumbing control programs in the Department of Human Services, Division of Health Engineering. The consultant shall:

1. Review various state agencies as alternatives to host the programs, including the potential for a new agency, and evaluate the assets and liabilities of each given their missions, structures, indirect costs, data management systems, enforcement capabilities and coordination of effort.

2. Develop a potential scenario for how these programs could be structured if they were moved to another department; and

3. By February 1, 2001, submit a report on these findings to the joint standing committees of the Legislature having jurisdiction over natural resources and human services matters.

The joint standing committees of the Legislature having jurisdiction over natural resources and human services matters have the authority to report out legislation to implement their recommendations pursuant to this report.

Ch. 776. Effective August 11, 2000.

CHAPTER 776

S.P. 1027 - L.D. 2600

An Act to Implement the Land Use Recommendations of the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development

[in part]

Sec. 15. 38 MRSA §488, sub-§19, as amended by PL 1997, c. 603, §4, is further amended by amending the first paragraph to read:

19. Municipal capacity. A structure, as defined in section 482, subsection 6, that is from 3 acres up to and including 7 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached, residential housing, common areas or open space with an aggregate area of from 30 acres up to and including 100 acres is exempt from review under this article if it is located wholly within a municipality or municipalities meeting the criteria in paragraphs A to D as determined by the department and it is located wholly within a designated growth area as identified in a comprehensive plan adopted pursuant to Title 30-A, chapter 187, subchapter II. The planning board of the municipality in which the development is located or an adjacent municipality may petition the commissioner to review such a structure or subdivision if it has regional environmental impacts. This petition must be filed within 20 days of the receipt of the application by the municipality. State jurisdiction must be exerted, if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any modification to that application from the municipality. Review by the department is limited to the identified regional environmental impacts. The criteria are as follows:

Sec. 17. Report on productive farming, fishing and forestry. The Land and Water Resources Council shall submit a report to the joint standing committees of the Legislature having jurisdiction over natural resources matters, agriculture, conservation and forestry matters and taxation matters by January 15, 2001 with an evaluation of and recommendations on the use of incentives to keep land in productive farming, fishing and forestry use.

Sec. 23. Transition; site location of development laws. A development that was exempt from review under the site location of development laws pursuant to the Maine Revised Statutes, Title 38, section 488, subsection 19 and reviewed by the municipality in which it is located prior to the effective date of this Act is considered to be located wholly within a designated growth area as identified in a comprehensive plan adopted pursuant to Title 30-A, chapter 187, subchapter II for the purposes of Title 38, section 488, subsection 19 as long as the municipality continues to meet the criteria in that subsection.

Ch. 779. Effective August 11, 2000.

CHAPTER 779

S.P. 734 - L.D. 2084

An Act to Reduce the Release of Mercury into the Environment from Consumer Products

Be it enacted by the People of the State of Maine as follows:

Sec. 6. Report on mercury releases into environment and mercury collection programs; legislation. The Department of Environmental Protection shall submit a report by January 15, 2002 to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the status of mercury releases into the environment. The report must include the following: an inventory of mercury releases into the air, water and land; the sources of mercury released into the environment, including natural sources; a summary of regional efforts to reduce releases of mercury into the environment; an assessment of the feasibility of reducing mercury pollution from crematoriums; and an estimate of the economic impact of the ban on disposal of low-mercury lamps, including the economic impact related to infrastructure, training and education.

The department shall also include in its report an assessment of the extent to which the infrastructure has been developed to enable collection and recycling of mercury-added lamps.

The joint standing committee of the Legislature having jurisdiction over natural resources matters has authority to report out a bill to the Second Regular Session of the 120th Legislature relating to mercury releases and programs for the collection, transportation, recycling and disposal of mercury-added products.

Ch. 782. Effective August 11, 2000

CHAPTER 782

H.P. 1768 - L.D. 2481

An Act to Establish the Dam Repair and Reconstruction Fund and Reconstruct 2 Small Dams in Whiting

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §844 is enacted to read:

§844. Dam Repair and Reconstruction Fund

1. Fund established. The Dam Repair and Reconstruction Fund, referred to in this section as the "fund," is established. The department shall administer the fund and may make grants from the fund solely for the repair or reconstruction of a dam pursuant to this section.

2. Grant criteria. A dam is eligible for a grant from the fund if it:

A. Controls the flow of water;

B. Is breached and causes a lowering of the water level; and

C. Meets any other criterion the department may by rule require.

3. Rulemaking. The department shall adopt rules to implement this section, including criteria and procedures for the application for and award of grants from the fund. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Dam Repair and Reconstruction Fund

All Other	\$400,000
-----------	-----------

Appropriates funds on a one-time basis to provide initial funding for the Dam Repair and Reconstruction Fund as established by the Maine Revised Statutes, Title 38, section 844. These funds must be transferred by the State Controller within 30 days of the effective date of this Act to the Dam Repair and Reconstruction Fund.

Sec. 3. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

2000-01

**ENVIRONMENTAL PROTECTION,
DEPARTMENT OF**

Dam Repair and Reconstruction Fund

All Other \$148,800

Allocates funds on a one-time basis for reconstruction of 2 dams that control the water level at Rocky Lake in Whiting.

Ch. 784. Effective August 11, 2000.

CHAPTER 784

H.P. 1814 - L.D. 2547

**An Act to Implement the Recommendations of the
Task Force to Study the Operation of and Support for
the Board of Environmental Protection**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 2 MRSA §6, sub-§6, as amended by PL 1997, c. 643, Pt. Q, §3, is further amended to read:

6. Range 85. The salaries of the following state officials and employees are within salary range 85:

Director of the Maine Emergency Management Agency;

Members, Maine Unemployment Insurance Commission;

Deputy Commissioner of the Department of Defense, Veterans and Emergency Management; ~~and~~

Director of the Bureau of Maine Veterans' Services; and

Executive Analyst, Board of Environmental Protection.

Sec. 2. 5 MRSA §931, sub-§1, ¶L-2, as enacted by PL 1997, c. 459, §3, is amended to read:

L-2. The Director of Econometric Research within the Bureau of Taxation; ~~and~~

Sec. 3. 5 MRSA §931, sub-§1, ¶L-3 is enacted to read:

L-3. The Executive Analyst of the Board of Environmental Protection; and

Sec. 4. 5 MRSA §938-A, as enacted by PL 1989, c. 890, Pt. A, §§2 and 40, is repealed.

Sec. 5. 38 MRSA §341-C, sub-§7, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

7. Conflict of interest. Members are governed by the conflict of interest provisions of Title 5, section 18. If a member believes that a conflict of interest may require that member's abstention in a proceeding, unless the member in question objects, the question of the conflict of interest must be submitted to a nonbinding advisory vote of the members present, excluding the member in question.

Sec. 6. 38 MRSA §341-D, sub-§1-B, as enacted by PL 1995, c. 347, §3, is amended to read:

1-B. Rulemaking. Subject to the Maine Administrative Procedure Act, the board shall adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering. The board shall also adopt, amend and repeal rules as necessary for the conduct of its business.

The department shall identify in its regulatory agenda, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than the federal standard, if an applicable federal standard exists.

During the consideration of any proposed rule by the board, when feasible, and using information available to it, the department shall identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the federal standard, if such a federal standard exists, and shall explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal standard.

Notwithstanding Title 5, chapter 375, subchapter II, the board shall accept and consider additional public comment on a proposed rule following the close of the formal rule-making comment period at a meeting that is not a public hearing only if the additional public comment is directly related to comments received during the formal rule-making comment period or is in response to changes to the proposed rule. Public notice of the meeting must comply with Title 1, section 406 and state that the board will accept additional public comment on the proposed rule at that meeting.

This subsection takes effect January 1, 1998.

Sec. 7. 38 MRSA §341-F, sub-§§1 and 2, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, are amended to read:

1. Staff. Staff of the board must be hired by the chair with the consent of the board. The executive ~~director~~ analyst shall direct the daily ~~operations~~ administrative and operational functions of the board and board staff in an impartial and objective manner. The board shall prescribe the duties of the executive analyst. The executive analyst is prohibited from participating in any activity that substantially compromises the executive analyst's ability to discharge effectively and impartially the executive analyst's duties to the board.

2. Unclassified employee. ~~Professional staff~~ The executive analyst of the board ~~are~~ is unclassified and may be removed, ~~only for cause, by the chair with consent~~ majority vote of the board.

Sec. 8. 38 MRSA §342, sub-§11-A is enacted to read:

11-A. Recommendations and assistance to board. The commissioner shall make recommendations to the board regarding proposed rules; permit and license applications; modification, revocation or suspension of licenses; appeals of license and permit decisions; and other matters considered by the board. The commissioner shall also provide the board with the technical services of the department.

Sec. 9. Hiring. The Chair of the Board of Environmental Protection shall hire an executive analyst no earlier than October 1, 2000.

Sec. 10. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

2000-01

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Board of Environmental Protection Fund

Positions - Legislative Count	
Personal Services	\$51,445
All Other	10,300
Capital Expenditures	3,000

Allocates funds for one Executive Analyst position and general operating funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

TOTAL

\$64,745

Ch. 790. Effective May 18, 2000.

CHAPTER 790

H.P. 1665 - L.D. 2334

An Act to Correct Errors and Inconsistencies in the Laws of Maine

[in part]

Sec. A-50. 38 MRSA §411, first ¶, as amended by PL 1999, c. 243, §3 and c. 375, §1, is repealed and the following enacted in its place:

The commissioner may pay an amount not to exceed 80% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners. The commissioner may make payments to the Maine Municipal Bond Bank to supply the State's share of the revolving loan fund established by Title 30-A, section 6006-A. The commissioner may pay up to 90% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners in which the construction cost of the project does not exceed \$100,000 as long as total expenditures for the small projects do not exceed \$1,000,000 in any fiscal year and not more than one grant is made to any applicant each year, except that the commissioner may pay a percentage of the cost of individual projects serving single-family dwellings, seasonal dwellings or commercial establishments according to the following schedule:

<u>ANNUAL INCOME</u>	<u>SINGLE- FAMILY DWELLING</u>	<u>SEASONAL DWELLING</u>
<u>\$0 to \$5,000</u>	<u>100%</u>	<u>50%</u>
<u>\$5,001 to \$20,000</u>	<u>90%</u>	<u>50%</u>
<u>\$20,001 to \$30,000</u>	<u>50%</u>	<u>25%</u>
<u>\$30,001 to \$40,000</u>	<u>25%</u>	<u>25%</u>
<u>\$40,001 or more</u>	<u>0%</u>	<u>0%</u>

<u>GROSS PROFIT</u>	<u>COMMERCIAL ESTABLISHMENT</u>
<u>\$0 to \$50,000</u>	<u>50%</u>
<u>\$50,001 to \$100,000</u>	<u>25%</u>
<u>\$100,001 or more</u>	<u>0%</u>

Sec. A-51. 38 MRSA §489-A, sub-§1, ¶A, as amended by PL 1999, c. 243, §17 and c. 468, §14, is repealed and the following enacted in its place:

A. Subdivisions as described in section 482, subsection 5 of more than 20 acres but less than 100 acres; or

Sec. A-52. 38 MRSA §489-A, sub-§1, ¶G, as amended by PL 1999, c. 243, §17 and repealed by c. 468, §15, is repealed.
